

**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA**

In the Matter of:

TIMOTHY D.,

Claimant,

vs.

HARBOR REGIONAL CENTER,

Service Agency.

OAH NO. 2001010309

DECISION

Administrative Law Judge Timothy S. Thomas, Office of Administrative Hearings, heard this matter on February 21, 2001 at Torrance, California.

Mark Dubie, Program Analyst for the Harbor Regional Center (hereinafter HRC, or service agency) represented the service agency. Robert D. and Christine D. represented Timothy D. (hereinafter Timmy, or Claimant), and were present throughout the hearing.

The matter was submitted on February 21, 2001.

ISSUES

1. Should HRC reimburse Claimant \$1,040.00 expended for equestrian therapy provided by Bell Performance, even if Bell was not and is not vendored by the service agency?

2. Should HRC fund future equestrian therapy services rendered by Bell Performance?

FACTUAL FINDINGS

1. Timmy is a nine-year-old boy who qualifies for regional center services based upon a diagnosis of autism. He lives at home with his parents, Robert and Christine D., and two sisters, ages five and six. He attends Washington School in Redondo Beach, where he is in the second grade, assisted by a one-on-one aide. He receives therapy from the Center for Autism and Related Disorders daily, as well as speech therapy, occupational therapy and consultations from a resource specialist and an adaptive physical education specialist.

2. Of the many difficult and challenging aspects involved with the care of Timmy, his parents are understandably concerned with his socialization and the appropriateness of his behavior in the community and with other children. He is presently aggressive toward others and prefers to play by himself. Particularly since both of his parents work, this behavior requires modification so that, among other things, Timmy can be placed in a traditional day care setting. This goal is recognized in Claimant's Individual/Family Service Plan (IFSP), the most recent of which is dated June 7, 2000. The plan indicates that the "parents will continue to facilitate Timmy's attendance of a community/socialization program that Timmy enjoys and is appropriate for him to attend. Timmy's parents will provide funding for Timmy to attend an integrated after school child care." The IFSP also states that "HRC will provide funding for program support for Timmy, in the amount of 5 hours per day from July 11-31, 2000, so that Timmy can successfully attend the Washington Elementary CDC after school, while his parents are working."

3. The IFSP also includes the observation that "Timmy recently began taking horse back riding lessons at the Palos Verdes Stables. Timmy spent the first three weeks of his lessons getting used to being near and sitting on the horse. Currently he enjoys the lessons and his parents hope that after another month of private riding lessons, Timmy will be able to join a group lesson." The IFSP contains no mention or suggestion of regional center assistance to fund the individual or group riding lessons. The discussion concerning horseback riding lessons is included in the section of the IFSP involving "Social/Recreation/Leisure/Play." The Desired Outcome of that section of the report reads: "Timmy will participate in a community based program that is accepting of children with developmental disabilities," and "Timmy will attend an integrated after school child care, with support."

4. The first mention of equestrian therapy as a tool to help Timmy is found in the service agency's interdisciplinary notes for September 20, 1999. In a conversation with HRC counselor Jennifer Klein, Robert D. indicated that he and his wife would look into the Ride to Fly program, which was apparently recommended

by Ms. Klein. No mention in the notes is made thereafter about the Ride to Fly program or what the parents determined as a result of their research, but Christine D. testified that she called Ride to Fly approximately twice per month for several months without receiving a return call. HRC now explains that Ride to Fly changed locations and was not offering riding lessons for a period of time, but had not so advised HRC. In any event, the parents became frustrated at their inability to contact Ride to Fly and decided to seek an alternative. The parents did not, however, alert HRC to the difficulties they were having contacting Ride to Fly, nor did they obtain authorization to commit to any other program.

5. Claimant began riding lessons that were conducted by Callie Bell of Bell Performance at Palos Verdes Stables in the spring of 2000. About two weeks before the annual IFSP meeting, held on June 7, 2000, Christine D. advised Ms. Klein that the Bell Performance lessons had begun and that Timmy was on a waiting list to have group lessons with Bell. (By that time Claimant's parents had been told that, by policy, the service agency would pay for group lessons, but not individual lessons.) Ms. Klein advised Christine D. that Palos Verdes Stables was not vendored with HRC "and must be so before we can set up any funding." The parents provided Ms. Klein with the phone number and address of Palos Verdes Stables, and on May 23, 2000 Ms. Klein, in turn, inquired of Stacey Norman, another employee of HRC, whether Palos Verdes Stables could be vendored. Ms. Klein had not received an answer to her inquiry when on August 10, 2000 she sent a follow-up message to Ms. Norman that added the name and telephone number of Callie Bell of Bell Performance.

Ms. Norman and Christine D. spoke about the possible vendoring of Palos Verdes Stables and/or Bell Performance on September 11, 2000. They discussed the possible sharing of the cost of Timmy's equestrian therapy, but no decision is evident from the notes concerning the proposed vendoring of the provider.

6. Timmy's parents report that before the riding lessons began Timmy was afraid of all animals, including common household pets. But in a relatively short time he has learned to groom, saddle, ride and turn a horse. Claimant's parents believe the benefits of the riding lessons have been that Timmy is involved in a valuable learning experience, has overcome his fear of animals, and may be strengthening certain muscles to help with his awkward gait. Although Timmy's mother adds that the activity provides a "social outlet," no claim is made that the individual lessons fulfill the general goal of socialization, at least insofar as that term contemplates interaction with other children.

7. To date, the parents have expended the sum of \$1,040.00 for individual lessons with Callie Bell.

8. As indicated, neither Bell Performance nor Palos Verdes Stables is vendored with HRC to provide equestrian therapy to the service agency's consumers. Two stables do have such a relationship with HRC. They are Ride to Fly and Valley View Vaulters, both located in Long Beach. While the Palos Verdes Stables are very convenient for Christine D. to be able to take Timmy for his lessons during the week, the Long Beach locations would require weekend appointments. The cost of the Ride to Fly program is comparable to the cost associated with the Bell Performance program.

9. On November 11, 2000 Claimant's parents wrote a letter to HRC seeking funding for the lessons Timmy had already received and would receive in the future through Bell Performance. HRC denied the request on the grounds that 1) there was no pre-authorization for the lessons, 2) the lessons were individual rather than group lessons, and 3) the provider was not vendored with HRC.

10. The service agency again referred the family to the Ride to Fly program, and Claimant's mother did visit that facility. She observed the program in action for about four hours, and formed the opinion that Bell Performance was a "less restrictive" setting and more appropriate for her son. However, she also admits that Ride to Fly appears to specialize in helping the disabled, while Callie Bell has no background or expertise in that area.

11. HRC has promulgated certain policies that it uses to guide its employees in responding to requests to fund services to consumers. Among the policies are several that seem to apply here. "Services and supports may be purchased for a client **only** under the following circumstances: ... 3. when such services are identified in the Individual/Family Service Plan and are tied to one or more outcomes desired by the client; ... 5. from a provider of service who is vendored or otherwise authorized by the Department of Developmental Services to provide such services and who adheres to the quality of care standards set forth by the Harbor Regional Center, the Department of Developmental Services and California regulations related to the service; ... 7. when, unless specified otherwise, there has been prior authorization for the purchased service." HRC Service Policy #1, General Standards (emphasis in original).

12. Other policies guide HRC with respect to services that will be approved to enhance the social, leisure and recreational skills of its clients. Those viewed as pertinent here are: "Harbor Regional Center will purchase socialization, leisure and recreation services or supports under the following circumstances: ... 2. when an Interdisciplinary Team has determined that the client has a social skill challenge ... and such challenge has been documented in the record; and 3. an opportunity has been identified to achieve an improvement in the client's social, recreational and

leisure life in the community or to develop friendships; and 4. no socialization, leisure or recreation opportunity is otherwise available to the client ... and 5. the need for the purchased service is documented in the client's Individual Program Plan which also includes specific desired outcomes and plans to develop social skills or friendships with the overall goal of including the client into social/recreation activities with non-disabled peers." HRC Service Policy #15, Socialization, Leisure and Recreation Skills.

LEGAL CONCLUSIONS

1. The Lanterman Act creates sweeping goals for the system it establishes: "The State of California accepts a responsibility for persons with developmental disabilities and an obligation to them, which it must discharge. ... The complexities of providing services and supports to persons with developmental disabilities requires the coordination of services of many state departments and community agencies to ensure that no gaps occur in communication or provision of services, and supports. A consumer of services and supports, and where appropriate, his or her parents ... shall have a leadership role in service design.

"An array of services and supports should be established which is sufficiently complete to meet the needs and choices of each person with developmental disabilities, regardless of age or degree of disability, and at each stage of life and to support their integration into the mainstream life of the community. ...

"Consumers of services and supports, and where appropriate, their parents ... should be empowered to make choices in all life areas. These include promoting opportunities for individuals with developmental disabilities to be integrated into the mainstream of life in their home communities ... In providing these services, consumers and their families, when appropriate, should participate in decisions affecting their own lives, including ... program planning and implementation. The contributions made by parents ... in support of their children ... with developmental disabilities are important and those relationships should also be respected and fostered, to the maximum extent feasible, so that consumers and their families can build circles of support within the community." Welfare & Institutions Code (WIC) section 4501.

2. Should this claim be denied because the goal of increased socialization in this case has not been addressed in a group setting?

Among the supports identified by the Act that a regional center shall provide where necessary to fulfill the legislative purpose are "recreation," and "behavior

training,” and “social skills training.” WIC 4512(b). HRC has supplemented these statutory goals with policies regarding “socialization.” These obviously contemplate some interaction by the consumer with others, presumably his peers. But no requirement is found in the policy guidelines submitted that require that riding lessons, or any type of social or recreational activity, be of a group variety. Moreover, the evidence indicates that while the Ride to Fly program involves up to four horses in a riding ring at one time, and the Palos Verdes program only two, the opportunity for group dynamics while on a horse seem minimal. Therefore, the fact that the requested reimbursement and funding is for individual lessons to this point in time does not disqualify Claimant either logically or according to HRC’s own guidelines. Indeed, those same guidelines recognize the benefits not only of socialization (the assumed basis for requiring the involvement of a group of children) but of purely leisure and recreational activities as well. The guidelines likewise speak of the modification of certain behaviors (“easily frustrated; resistive”) that may be accomplished in a one-on-one setting with an adult, or with a horse, for that matter.

Claimant likewise generally meets the other applicable socialization policies (see Factual Findings paragraph 12). The record does reflect that Claimant’s interdisciplinary team has identified a “social skill challenge,” and equestrian therapy does represent an opportunity to achieve an improvement in his social, recreational and leisure life in the community. The evidence in this matter is scant with regard to whether other such opportunities were unavailable. It is known that Timmy was, and perhaps still is enrolled in gymnastics classes and that he has been placed in a day care setting after school. The family and counselor have also discussed swimming lessons, music lessons and attendance at camp to add to the youngster’s experiences and socialization. But taken as a whole, the request by Claimant for reimbursement in this matter does not offend the Socialization, Leisure and Recreation Skills policies of the service agency. In any event, if the IPP or the applicable law otherwise mandates the service or support, a more restrictive policy or guideline will not authorize the service agency to withhold it. Williams v. Macomber, 226 Cal.App.3d 225 (1990).

3. Therefore, the decision in this case turns on the other reasons for the denial of this service: the lack of pre-authorization, and the fact that Bell Performance was not a vendored service provider. In addition, although not mentioned by HRC as a specific ground of denial, the requirement that the service must be a part of the IPP (or IFSP) should be considered in this analysis as well.

The Lanterman Act provides that in securing the needed services and supports mandated by the Act, the regional center shall purchase such services and supports “pursuant to a vendorization or a contract,” which is “the process for identification, selection, and utilization of service vendors or contractors, based on the qualifications and other requirements necessary in order to provide the service.” WIC 4648(a)(3).

The HRC policies (General Standards; see Factual Findings paragraph 11) likewise require that a service provider be vendorized. It is factually proven that Bell Performance did not have a vendor or contractual relationship with the service agency in this matter.

However, Lanterman also provides that a regional center may pay a non-vendored service provider for services and supports provided to a consumer on a contract or voucher basis. WIC 4648(a)(4). Therefore, despite the clear requirement in the service agency's guidelines, a method does exist to overcome the lack of vendorization if the service agency is otherwise required to provide the service. And given the unresponsiveness of the Ride to Fly organization to Claimant's calls for several months, this may have been a viable option for the parties to utilize if, again, the service agency were required to purchase riding lessons.

The inescapable conclusion, however, is that HRC was not required to purchase the service. The Lanterman Act and, of course, the HRC policies and guidelines, point to the IPP (in this case the IFSP) as the critical document for delineating the service agency's ultimate responsibilities. "The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of the consumer or, when appropriate, the consumer's family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option." WIC 4512(b). The critical document in this case does not list equestrian therapy or horseback riding lessons as a part of the plan to reach the desired outcome of participation in a community program or attendance at an integrated after school child care program. There is no evidence that the requested service was measured for its effectiveness to achieve the stated goals as compared to other options, or of its cost-effectiveness. The fact that Claimant's IFSP mentions that the parents have been taking Timmy to riding lessons is insufficient to meet the requirement of IPP planning and analysis.

Moreover, Lanterman specifically provides, after listing the many and various services that may be purchased for a consumer, including recreation and social skills training, that "nothing in this subdivision is intended to expand or authorize a new or different service or support for any consumer unless that service or support is contained in his or her individual program plan." WIC 4512(b).

4. The lack of prior authorization for the requested service is largely a byproduct of the absence of the service from the IFSP. Whether under the particular circumstances involved here the lack of prior authorization alone would have justified

denial of reimbursement is unnecessary to this decision. The parties are urged to evaluate the effectiveness of equestrian therapy in Timmy's case, the appropriateness of the Bell Performance program as opposed to Ride to Fly, and the cost and convenience factors at the time of the next IPP/IFSP meeting.

ORDER

Claimant's request for reimbursement for the cost of riding lessons provided by Bell Performance is denied. The right to future services provided by Bell Performance shall depend on their inclusion in Claimant's IPP/IFSP and the interdisciplinary team's analysis of the factors listed in WIC 4512(b).

NOTICE

This is the final administrative decision. Both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within ninety days.

DATED: February 26, 2001

TIMOTHY S. THOMAS
Administrative Law Judge
Office of Administrative Hearings